

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**MISC. PETITION NO.35 OF 1994
IN
TESTAMENTARY PETITION NO.594 OF 1990
ALONG WITH
LAND ACQUISITION REFERENCE NO.85 OF 1987**

1. Miss Aloo Navroj Pavri)
daughter of late Mrs.Bhaicaiji Navroj Pavri)
and late Mr. Navroj Sorabji Pavri,)
Residing at Mackwee Mansion No.7,1st floor))
Gumbow Street, Fort, Bombay-400 001.)
)
 2. Mr. Sorab Navroj Pavri)
Son of late Mrs. Bhaicaiji Navroj Pavri)
and late Mr. Navroj Sorabji Pavri)
Residing at A/2, Marian House, t.P.S. III)
29th Road, Bandra (West), Bombay-400 050) ...Petitioners
- Vs.
- 1(b). Dr.Faram Eruch Irani)
 - 1(c). Ms. Parviz Eruch Irani)
 - 1(d). Ms. Kaisaer Eruch Irani)
All residing at Rustom Court,)
Opposite Petrol Pump, Annie Beasant Road)
Worli, Mumbai-400 018.) ...Respondents

Mr.P.N.Modi alongwith Mr. R.R. Bhangale
i/b. Vanita Kakkar for Petitioners in MPT
Mr.Dipan Merchant ,Sr. Counsel with Ms. S.T.Shaikh
i/b. S.K.Srivastav & Co. for Respondent 1A in MPT & Claimant
1 A in LAR
Ms. Geeta Shastri for SLAO in LAR

CORAM: SMT. ROSHAN DALVI, J.
DATED: 16TH JANUARY, 2007

JUDGMENT (PER SMT. ROSHAN DALVI, J.)

1. The Petitioners have filed this Petition for revocation of the grant of Probate of the WILL of the deceased Najamai Kaikhushroo Jalnawala (the Testatrix) and other ancillary reliefs.
2. The Petitioners claim to be the son and daughter of the predeceased sister of the Testatrix. As such they claim to be the heirs and legal representatives of the deceased Testatrix and accordingly claim to have the right to be issued a citation in the Probate Petition filed by the Petitioners therein before the Probate could be issued therein.
3. The Petitioners must therefore, show their relationship with the deceased. The testatrix expired in 1989. The testatrix was born some time in 1899. She got married in 1921.
4. The Petitioners have relied upon their respective birth certificates and the marriage certificates of the testatrix as well as their mother who are claimed to be two sisters.

5. The birth certificate of Petitioner no.1 shows she having been born on 13th April, 1926 in Parsi lying in hospital at Bombay. Her father is shown therein to be Navroji Sorabji Pavri. Her mother is Bhikhaiji. Her permanent address is at 19, Police Court Lane. The Petitioner has produced the certified copy of the extract of the birth register from the records of the Municipal Corporation. It is a certified extract of the public document. It carries the presumption as to the correctness of its contents. It has therefore, not to be separately proved by any oral evidence. It has to be taken on record of the Court proceedings by merely tendering it in Court. The birth certificate of Aloo Navroj Pavri as described above is taken on record and marked Exhibit-A.

6. The second Petitioner has relied upon his birth certificate showing his birth on 4th April, 1928. The name of his father is also shown to be Navroji Sorabji Pavri. The name of his mother is also shown to be Bhikaiji. His permanent address is shown to be Police Court Lane. This document is also a certified extract of a public record and carries the presumption as to its correctness. It is also not required to be proved by direct oral evidence. It has to be merely tendered in evidence. It is taken on record and marked Exhibit-B.

7. It can be seen that the two children of Bhikaiji and Navroji Pavri being Aloo and Sorab were born at a distance of 2 years in 1926 and 1928 at the same address.
8. The Petitioners have further produced and tendered in evidence the marriage certificate of the testatrix, who was then Najamai Dinshawji Adajania. Her marriage is shown to have taken place on 25th December, 1921. She was at that time a housewife. She was married to one Kaikhushroo Dossabhoy Jalnawala. The certificate is issued as an extract of the register under Section 6 of Act III of 1936 of Parsi Marriages solemnised within the legal limits of the Ordinary Original Civil Jurisdiction of the High Court of Bombay. It is therefore an extract of a document statutorily kept as a public document. There is a presumption as to the correctness of the contents of such document, since it is issued under the stamp and seal of the Registrar of Parsi Marriages, High Court, Bombay. It has not to be proved by a direct oral evidence. The certificate of marriage showing the certified extract from the register of marriages, High Court Bombay of the testatrix is therefore taken on record and marked Exhibit-C.
9. The Petitioners have produced the certificate of marriage

similarly issued by the Registrar of Parsi Marriages, High Court Bombay of their mother, the sister of the Testatrix. The certificate shows Bhikhaiji Dinshawji Adajania married to Navroji Sorabji Pavri on 22nd November, 1911. The said certificate of marriage for the reasons stated above is not required to be proved by direct oral evidence. It is taken on record and marked Exhibit-D.

10. It can be seen that the mother of the Petitioners was born in Adajania family as much as the testatrix. The father of the testatrix as well as the father of the Petitioners' mother is the same person, Dinshawji Adajania. After marriage the Petitioners' mother came to be known as Bhikhaiji Pavri since she married Navroji Sorabji Pavri on 22nd November, 1911.

11. The Petitioners have shown the same father of their mother and of the testatrix. The Petitioners have shown both of them as children of the same father Navroji Sorabji Pavri who is shown as the husband of the mother in her marriage certificate.

12. The permanent address of the Petitioners shown in their birth certificate is the same as the permanent address of their father shown in the marriage certificate. The two

marriage certificates show two ladies, the testatrix and the mother of the Petitioners both shown as the daughters of Dinshawji Adajania married in two separate families, that of Pavri and Jalnawala.

13. These four documents which carry a presumption as to their correctness, they being the certified extracts of public records, show the Petitioners to be the children of the predeceased sister of the testatrix. The Petitioners are thereby shown to be the heirs and legal representatives of the testatrix. They are required to be served the citation upon the Probate Petition being filed.

14. It is argued on behalf of the Respondents that the Respondents must cross examine the Petitioners with regard to these public documents. The application proceeds on fundamental error regarding the law of evidence. Oral evidence is required to be led for disputed statements of fact. The fact that the statement of the Petitioners that they are the children of predeceased sister of the testatrix is disputed is not the reason why the Petitioners have to be cross examined. That would be true if the Petitioners make such a statement and not substantiate it by documentary evidence. The Petitioners have instead produced documentary evidence. That documentary evidence is the certified

extracts of the public records. The Petitioners have not produced any documentary evidence by way of private documents. Cross examination of the Petitioner would be apt only if they rely upon private documents to substantiate their statements of facts. Since there is a presumption in law as to the correctness of certified extracts of public records, the oral evidence upon such documents could be led only to rebut the statutory presumption. The Respondents seek to rebut that presumption. It is therefore, for the Respondents to lead evidence to rebut the presumption. That cannot be by cross examination of the Petitioner on the documents. In fact the Petitioners may be entitled to lead evidence in rebuttal if the presumption under the law is rebutted by the Respondents leading any oral evidence.

15. The other aspect with regards to the correctness of these public documents is by the tenor of the documents themselves under Section 90 of the Indian Evidence Act. The handwriting in the documents and/or the signature therein of a document more than 30 years old carries another presumption as to the correctness of the contents of the document. Though the certified extracts are issued in 1995 they relate to the births of the Petitioners in 1926 and 1928 and the marriages of their mother of the Testatrix in 1911 and 1921.

16. It is also argued on behalf of the Respondents that because the address in these documents is sketchy, the documents do not show whether they resided at the same place and whether it was same persons who are the Petitioners who are shown to have resided at the address mentioned in the documents. The presumption in law cannot be watered down by the sketchy contents of one of the columns of the public document. In fact it is interesting to note that the same address mentioned in the birth certificate of the Petitioners which are of the years 1926 and 1928 is also shown in the marriage certificate of their mother which is of 1911, more than 15 years apart. This address could have been different if their permanent address has been changed in the mean time. The address in these documents therefore, is of little consequence. The relationship of the parties, upon seeing the relationship of their mother and the father in the birth certificates and the parties to the marriage certificate, showing the families in which they were married, which also shows the names of the same mother and father in the marriage certificates, show the relationship claimed by the Petitioners.
17. It is argued on behalf of the Respondents that the notice of funeral dated 21st January, 1968 of the Petitioner's

mother does not show the testatrix as her sister. The notice shows her lineage through her parents and the names of all her children including the Petitioners. In fact it is a common ground that the two sisters and the children of the sister of the Testatrix were not have been in touch with the Testatrix. The notice of funeral is not required to statutorily comply with any requirements to show the siblings of the deceased. In the circumstances in which the parties were, they being not in touch with one another, the name of the sister of the deceased may not have found place in the notice of the funeral. In any event that is not a document ultimately relied upon by the Petitioners and tendered in evidence.

18. It is also argued on behalf of the Respondents that they had given public notice in two newspapers as per procedure after filing of the Petition for Probate and the Petitioners never responded to the notice. The Respondents have not shown any provision of law under which, the Petitioners can be permanently prevented from applying for revocation of Probate if they fail to respond to the Public Notices. That fact goes a long way in showing how close the Petitioners may have been to the testatrix and what may have been the relationship between the two. It, however, cannot preclude the Petitioners from applying for revocation of the Probate if they show that they should have been served the citation in

the Petition to allow them an opportunity to challenge the Will of the Testatrix. That fact would certainly come to the aid and assistance of the Respondents in the Probate Petition whilst considering of the claim of the Petitioners on merits.

19. This application for revocation of the Probate leaves a very narrow ambit to the Court to consider. All that is to be seen is whether the Petitioners are the heirs and legal representatives of the testatrix. That much has been shown. No further evidence is mandatorily required to be led by the Petitioners.

20. Mr.Merchant on behalf of the Respondents states that the Respondents cannot and do not desire to lead any oral evidence to disprove the contents of the certified extracts of public documents Exhibits A to D.

21. The Petition is made absolute in terms of prayer clause (a).

22. The Petitioners in the Probate Petition No.594 of 1990 shall issue citation upon the Petitioners in this Petition.

23. The Advocate for the Petitioners in this Petition waives service on behalf of the Petitioners and agrees to accept the

citation on their behalf. If the Petitioners file their Caveat as per precedence, upon the citation being served, the Petition shall proceed in the normal course as Testamentary Suit.

24. Both the Advocates agree that LAR No.85 of 1987 cannot proceed until the Probate is either granted or refused by the Testamentary Court in the Testamentary Suit which would be filed as per procedure. Hence, the LAR is adjourned sine die.
25. Either party shall be entitled to bring it up on board after the Probate Petition is disposed of.

(SMT.ROSHAN DALVI, J.)